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Supreme Court, U.S.  
FILED  
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No. 98-436

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1998

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JOHN H. ALDEN, *et al.*,  
v. *Petitioners,*  
STATE OF MAINE,  
*Respondent.*

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On Petition for a Writ of Certiorari to the  
Maine Supreme Judicial Court

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**SUPPLEMENTAL BRIEF FOR PETITIONERS**

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## SUPPLEMENTAL BRIEF FOR PETITIONERS

Pursuant to Rule 15.8 of the Rules of this Court, John H. Alden *et al.*, the petitioners in this case, file this supplemental brief to call the Court's attention to the Order of the Supreme Court of the State of New Mexico denying the State of New Mexico's *certiorari* petition to that Court in *Stephen R. Whittington, et al. v. State of New Mexico Department of Public Safety, et al.*, N.M. S.Ct. No. 25,364 (October 14, 1998).<sup>1</sup>

By that Order the New Mexico Court put the New Mexico law on the First Question presented here—"May a state court refuse to entertain a federal statutory private party cause of action against a State or a state agency—such as [an] employee action against the State . . . under the overtime provisions of the Fair Labor Standards Act. . . —on the basis of state sovereign immunity"—in line with the Arkansas law as declared by the Arkansas Supreme Court in *Jacoby, et al. v. Arkansas Department of Education*, 331 Ark 508, 962 S.W. 2d 773 (1998) pet. for cert. pending *sub. nom. Arkansas Department of Education v. Jacoby, et al.* (No. 98-04), and in conflict with the Maine law as declared by the Maine Supreme Judicial Court in this case.

The decision of the Court of Appeals of the State of New Mexico which became final in that State by reason of the New Mexico Supreme Court's Order is *Whittington, et al. v. State of New Mexico Department of Public Safety, et al.*, Docket No. 19,065 (N.M. Ct. App., September 3, 1998) ("based on the previous decisions by the Supreme Court, we find that the Supremacy Clause requires the district court to enforce the FLSA notwithstanding the

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<sup>1</sup> The New Mexico Supreme Court's Order is reprinted as an Appendix hereto.

Department's assertion of state sovereign immunity")  
cited Pet. 13 and Br. in Opp. 13, n.6.<sup>2</sup>

Respectfully submitted,

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<sup>2</sup> We also note that just prior to the New Mexico Supreme Court's Order in the *Whittington* case the State Court of Appeals issued a decision in *Kuehl et al. v. State of New Mexico Department of Public Safety et al.*, Docket No. 19, 313 (N.M. Ct. of App., October 5, 1998), reaffirming its ruling in *Whittington*.

## **APPENDIX**



SA-1

APPENDIX

IN THE SUPREME COURT  
OF THE STATE OF NEW MEXICO

Wednesday, October 14, 1998

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No. 25,364

STEPHEN R. WHITTINGTON, *et al.*,  
*Plaintiffs-Respondents,*

vs.

STATE OF NEW MEXICO DEPARTMENT OF PUBLIC SAFETY,  
DARREN P. WHITE, in his capacity as Secretary of the  
New Mexico Department of Public Safety, and FRANK  
TAYLOR, in his capacity as the Chief of the New Mex-  
ico State Police,

*Defendants-Petitioners.*

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ORDER

This matter coming on for consideration by the Court upon petition for writ of certiorari, and the Court having considered said petition and response, and being sufficiently advised;

NOW, THEREFORE, IT IS ORDERED that petition for writ of certiorari is denied in Court of Appeals number 19065.